



January 15, 2021

VIA EMAIL & PRIORITY MAIL

David Bernhardt, Secretary of the Interior
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Aurelia Skipwith, Director
U.S. Fish and Wildlife Service
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RE: Sixty-day notice of violation of the Endangered Species Act relating to the U.S. Fish and Wildlife Service's failure to publish listing determinations for the Sierra Nevada red fox, Hermes copper butterfly, Bartram's stonecrop and beardless chinchweed, and failure to publish critical habitat determinations for the Hermes copper butterfly and beardless chinchweed

Dear Secretary Bernhardt and Director Skipwith,

This letter serves as a sixty-day notice from the Center for Biological Diversity (Center) of our intent to sue the U.S. Fish and Wildlife Service (FWS) pursuant to the Endangered Species Act (ESA), 16 U.S.C. § 4(b)(6), for the agency's failure to publish a final listing determination for the Sierra Nevada red fox, Hermes copper butterfly, Bartram's stonecrop and beardless chinchweed, and failure to publish a critical habitat determination for the Hermes copper butterfly and beardless chinchweed. The Center is providing this letter to you pursuant to the 60-day notice requirement of the citizen suit provision of the ESA. 16 U.S.C. § 1540(g)(2)(C).

I. Requirements of the ESA

Section 4 of the ESA states:

Within the one-year period beginning on the date on which general notice is published in accordance with paragraph (5)(A)(i) regarding a proposed regulation, the Secretary shall publish in the Federal Register—

- (i) if a determination as to whether a species is an endangered species or a threatened species, or a revision of critical habitat, is involved, either—

(I) a final regulation to implement such determination,

(II) a final regulation to implement such revision or a finding that such revision should not be made,

(III) notice that such one-year period is being extended under subparagraph (B)(i), or

(IV) notice that the proposed regulation is being withdrawn under subparagraph (B)(ii), together with the finding on which such withdrawal is based; or

(ii) subject to subparagraph (C), if a designation of critical habitat is involved, either—

(I) a final regulation to implement such designation, or

(II) notice that such one-year period is being extended under such subparagraph.

16 U.S.C. § 4(b)(6)(A).

III. The FWS' Violations of the ESA

The FWS has failed to comply with its duty under 16 U.S.C. § 4(b)(6) to publish a final listing determination for the Sierra Nevada red fox, Hermes copper butterfly, Bartram's stonecrop and beardless chinchweed. In addition, the FWS has failed to comply with its duty under 16 U.S.C. § 4(b)(6) to publish a critical habitat determination for the Hermes copper butterfly and beardless chinchweed.

Sierra Nevada red fox

The Sierra Nevada distinct population segment (DPS) of the Sierra Nevada red fox (*Vulpes vulpes necator*) historically ranged throughout the Sierra Nevada mountains, but is now restricted to a single known population near Sonora Pass, CA. The population size is extremely small, estimated to be only 10 to 50 adults. In addition to its extremely small population size, the Sierra Nevada red fox is threatened by the effects of climate change on its subalpine habitat. For example, climate change can lead to reduced snowpack and other factors that allow increased coyote competition. Recreation is also a threat, such as from snowmobiles.

The Center filed a petition to list the Sierra Nevada red fox under the ESA on April 27, 2011. FWS issued a positive 90-day finding on the petition on January 3, 2012 (77 Fed. Reg. 45), and a positive 12-month finding on October 8, 2015 (80 Fed. Reg. 60989). The 12-month finding, however, asserted that listing was “warranted but precluded” by higher priority listing actions, and a proposed listing as endangered was not issued until January 8, 2020. 85 Fed. Reg. 862. The

2020 proposed listing triggered a mandatory duty under the ESA that FWS make a determination on the proposed listing within one year. 16 U.S.C. § 1533(b)(6)(A)(i). Therefore, FWS was required to make such determination regarding the Sierra Nevada red fox by January 8, 2021. If the Secretary does not issue its determination within the next 60 days, the Center intends to file suit.

Hermes copper butterfly

The Hermes copper butterfly (*Lycaena hermes*) is currently only found in San Diego County, California, and northwestern Baja California, Mexico. The butterfly inhabits chaparral and coastal sage scrub, where its host plant, the spiny redberry, is found. Many of the butterfly's populations have been lost over the past few decades from urban sprawl that has destroyed and fragmented the species' habitat. Continued urban development, as well as climate change, fire, and drought are the most serious threats to the species.

The Center filed a petition to list the Hermes copper butterfly under the ESA on October 25, 2004, and the FWS issued a positive 90-day finding on the petition on May 4, 2010. 75 Fed. Reg. 23654. On April 14, 2011, a positive 12-month finding was issued, but listing was determined to be precluded by higher priority actions. 76 Fed. Reg. 20918. The Hermes copper butterfly remained a candidate for listing until January 8, 2020, when it was finally proposed for listing as threatened along with a proposal to designate approximately 14,249 hectares (35,211 acres) of critical habitat in San Diego County, California. 85 Fed. Reg. 1018. The 2020 proposals triggered a mandatory duty to make listing and critical habitat determinations regarding the Hermes copper butterfly by January 8, 2021. 16 U.S.C. § 1533(b)(6)(A). If the Secretary does not make the required determinations within the next 60 days, the Center intends to file suit.

Bartram's stonecrop

Bartram's stonecrop (*Graptopetalum bartramii*) is a succulent that typically occurs on rocky outcrops in narrow canyons, usually close by to streambeds, springs, or seeps. Historically, this plant occurred in sky island mountain ranges in southern Arizona and northern Mexico, but currently, there are only 3,726 adult individuals known to exist within the United States. Four populations were recently lost due to the drying of habitat. Drying is associated with loss of water in nearby drainages, such as from mining or drought. Livestock grazing and recreation are also a continued threat to the species.

The Center filed a petition to list the Bartram's stonecrop under the ESA on July 7, 2010, and the FWS issued a positive 90-day finding on the petition on August 8, 2012. 77 Fed. Reg. 47352. On December 6, 2019, Bartram's stonecrop was finally proposed for listing as threatened. 84 Fed. Reg. 67060. The 2019 proposed listing triggered a mandatory requirement under the ESA that FWS make a determination on the proposed listing within one year. 16 U.S.C. § 1533(b)(6)(A)(i). Therefore, FWS was required to make such determination regarding the Bartram's stonecrop by December 6, 2020. If the Secretary does not make the required determination within the next 60 days, the Center intends to file suit.

Beardless chinchweed

The beardless chinchweed (*Pectis imberbis*) is a perennial of the sunflower family that is typically found in oak woodlands at higher elevations, and desert grasslands and oak savannas at lower elevations in Arizona and northern Chihuahua and Sonora, Mexico. There are 6 currently known populations in southeastern Arizona with only 387 individuals. Threats include nonnative species invasion, such as a widespread grass from South Africa that outcompetes the chinchweed. Drought, which is exacerbated by climate change, is also a serious threat, as is livestock grazing.

The Center filed a petition to list the beardless chinchweed under the ESA on July 7, 2010, and the FWS issued a positive 90-day finding on the petition on August 8, 2012. 77 Fed. Reg. 47352. On December 6, 2019, the beardless chinchweed was finally proposed for listing as endangered along with a proposal to designate approximately 10,604 acres (4,291 hectares) in southern Arizona as critical habitat. 84 Fed. Reg. 67060. The 2019 proposals triggered a mandatory duty to make listing and critical habitat determinations regarding the beardless chinchweed by December 6, 2020. 16 U.S.C. § 1533(b)(6)(A). If the Secretary does not make the required determinations within the next 60 days, the Center intends to file suit.

It is our practice to pursue negotiations whenever possible. In keeping with this policy, we invite the FWS to contact us to discuss the issues raised in this notice.

Sincerely,



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